In each case, petitioner filed with respondent a certificate of such sale; the latter directed the Surveyor of the Port of Manila to superintend the transfer of the oil to the designated vessel and make return to respondent; and such surveyor did certify to respondent the correct weight of the fuel oil thus laden [R. 30-126].

Petitioner then prepared and presented to respondent the appropriate drawback entries and requested that the customs duties paid on said fuel oil, less one per cent. thereof, be refunded to it as provided in Section 21 of said Tariff Law of 1909 [R. 30-126].

Respondent refused to authorize or pay said drawbacks on the sole ground that the Secretary of Justice of the Philippine Islands in an opinion rendered on July 28, 1933, had determined that drawbacks of customs duties on imported fuel oil can only be allowed under said Section 21 of the Law of 1909 [36 Stat. 176], when such fuel is used for the propulsion of vessels of Philippine registry [R. 127].

This ruling reversed the prior ruling and practice of the Insular Collector of Customs which had theretofore been in effect since the enactment of the Law of 1909. This earlier ruling, although not directly established by evidence at the trial, was a matter of which the insular courts were required to take judicial notice [Section 275 of the Code of Civil Procedure of the Philippine Islands] and was directly presented to the Supreme Court on Petitioner's application for a reconsideration [R. 159-161].

SPECIFICATION OF ERRORS

The Supreme Court of the Philippine Islands and the Court of First Instance of Manila erred in limiting the re-

fund of tariff duties provided for by Section 21 of the Philippine Tariff Act of 1909 to refunds for fuel oil used for the propulsion of vessels *of Philippine or American registry.*

SUMMARY OF ARGUMENT

I.

This Court has jurisdiction to review the judgment of the Supreme Court of the Philippine Islands. The Tariff Act of 1909 is a statute of the United States, reviewable on certiorari by this Court, *Gsell* v. *Insular Collector of Customs,* 239 U. S. 93. The status of that Act was not altered or intended to be altered, by the Organic Act of 1916, or by the Independence Act of 1934, or otherwise.

II.

On the merits, the decision of the Supreme Court of the Philippine Islands cannot be supported, for it reads into § 21 of the Tariff Act of 1909 a limitation inconsistent with its language and contrary to its purpose. The statute provides a drawback on all fuel imported and thereafter used for the propulsion of vessels engaged in foreign or coastwise trade. The Court of First Instance in effect inserted after the word "vessels" the phrase "of Philippine registry", and the Supreme Court of the Philippine Islands in turn widened this to read "of American or of Philippine registry". This was done on the theory that the purpose of the statute was to promote the merchant marine. But, the statute is too plain to permit of this type of construction, and in any event, the legislative history clearly establishes that the purpose of the statute, in so far as it had a purpose

other than a revenue purpose, was to aid Philippine merchants, including merchants of fuel oil, and not to aid or develop a merchant marine.

ARGUMENT

PART ONE.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

POINT I.

The Philippine Tariff Act of 1909 was a statute of the United States.

The status of the Philippine Tariff Act of 1909 as a statute of the United States was established in *Gsell* v. *Insular Collector of Customs,* 239 U. S. 93.[1]

The jurisdictional question is whether the Tariff Act of 1909 (as enacted by the Congress of the United States), although admittedly still in effect in the Philippine Islands (both at the time of the acts which constitute the subject matter of this suit, and at the present time) has lost its status as a statute of the United States. This depends upon the question whether the Congress had such an intention in enacting the Organic Act of 1916 and the Independence Act of 1934. We think it clear that neither was

[1]This Court's jurisdiction in the *Gsell* case rested upon L. 1902, Ch. 1369, Sec. 10, 32 Stat. 695, which was substantially identical with L. 1925 Ch. 229, Sec. 7, except that it provided for review upon appeal or by writ of error instead of by writ of *certiorari.*

intended to change the status of the Tariff Act of 1909 as a statute of the United States.

POINT II.

The Organic Act of 1916 did not convert pre-existing United States statutes into merely insular statutes.

(1) The Organic Act did not in terms alter the status of statutes of the United States.

The Organic Act, enacted for the purpose of providing a more autonomous government for the Philippine Islands (L. 1916, Ch. 416, 39 Stat. 545), created a local legislature, and authorized it, with certain limitations, to alter, modify or repeal existing laws applicable to the Islands. The particular sections of the Organic Act upon which counsel for the respondent relied in his brief in opposition to petition for certiorari were sections 5, 6, 7, 8 and 10, which provide as follows:[2]

> "SEC. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.
>
> "SEC. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.
>
> "SEC. 7. That the legislative authority herein provided shall have power, when not inconsistent

[2] 39 Stat. 547-548; 48 U. S. C. A. § 1003, 1004, 1005, 1041, 1042.

with this Act, by due enactment to amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

"SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

* * *

"SEC. 10. That while this Act provides that the Philippine Government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: Provided, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States * * *."

It is apparent that these provisions of the Organic Act did not *in terms* deprive the Tariff Act of 1909 of its haracter as a statute of the United States, for § 6 expressly reserved legislative power on the subject to the Congress of the United States, although conferring correlative power on the Philippine legislature.

(2) The Organic Act was not intended to alter the status of statutes of the United States.

The argument to the contrary misconceives the fundamental purpose of the Organic Act. Its preamble is expressive of a purpose to entrust legislative powers to the

local legislature, not by way of pre-empting the Congressional power, but only by way of educating the Philippine people for self-government, while retaining full ultimate jurisdiction and control at home. The preamble states, 39 Stat. 545:

> "Whereas it was never the intention of the people of the United States in the incipiency of the war with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> "Whereas it is, as it always has been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> "Whereas for the speedy establishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence."

This was a purpose *to prepare* the Philippine people for independence by authorizing them to legislate *to a certain extent,* while reserving to their fullest the *sovereign powers* of the people of the United States.

The Act, in addition to the provisions hereinabove quoted, contained in § 19 a provision that

> "All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and au-

thority to annul the same." (39 Stat. 551; 48 U. S. C. A. § 1054).

The significance both of § 6 and of § 19 of the Organic Act is apparent from the decision of this Court construing like provisions of the earlier Acts which conferred legislative power on the President and the Philippine Commission. In *Public Utility Commissioners* v. *Ynchausti & Co.*, 251 U. S. 401, at page 407, the opinion of Mr. Chief Justice White disposed of a similar argument as to non-existence of Congressional power:

> "The error which thus underlies the whole argument becomes more conspicuously manifest by recalling that Congress in the Act of 1904 expressly provided that the authority which that act gave should exist only until Congress should otherwise provide, and, besides, that before the passage of that act, the Act of July 1, 1902, c. 1369, §86, 32 Stat. 691, 712, provided "that all laws passed by the government of the Philippine Islands shall be reported to Congress, which hereby reserves the power and authority to annul the same."

And finally the Organic Act provided in § 31:

> "Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect." (39 Stat. 556; 48 U. S. C. A. § 1006.)

Had the Congress intended to change the holding of the *Gsell* case in the previous year, 239 U. S. 93, *supra*, it could easily have done so by providing at the end of § 31, "but as local laws of the Philippine Islands and not as statutes of the United States." But it did not so do.

(3) The reservation of Congressional power in the Organic Act did not invalidate the limited grant to the Philippine Legislature.

The Respondent's argument, in opposition to the petition for writ of certiorari, was that the Congressional *power was preempted* (*i.e.*, irrespective of the Congressional intent) by the delegation of limited power to the Philippine Legislature, because otherwise the division of power between the Congress and the Philippine Legislature would render the grant invalid as a delegation of legislative power (*cf. Panama Refining Co.* v. *Ryan,* 293 U. S. 388). But the power of the Congress to delegate legislative power in respect of the Philippines, while reserving a like power to itself, was recognized by this Court in *United States* v. *Heinszen & Company,* 206 U. S. 370, 384-385, as "a proposition which is not now open for discussion", the Court saying:

> "First. Whilst it is admitted that Congress had the power to levy tariff duties on goods coming into the United States from the Philippine Islands or coming into such islands from the United States after the ratification of the treaty, it is yet urged that as that body was without authority to delegate to the President the legislative power of prescribing a tariff of duties, it hence could not by ratification make valid the exercise by the President of a legislative authority which could not have been delegated to him in the first instance. But the premise upon which this proposition rests presupposes that Congress in dealing with the Philippine Islands may not, growing out of the relation of those islands to the United States, delegate legislative authority to such agencies as it may select, a proposition which

> is not now open for discussion. *Dorr* v. *United States,* 195 U. S. 138."

The same argument was inferentially rejected (in regard to Porto Rico) in *Downes* v. *Bidwell,* 182 U. S. 244, see pages 280-281.

That the creation by the Congress of a local legislature, and grant of power thereto, does not deprive the Congress of the reserved power itself to legislate for the territory in question, was recognized as early as *National Bank* v. *Yankton,* 101 U. S. 129, in which Mr. Chief Justice Waite said, at page 133:

> "Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments."

POINT III.

The Philippine Independence Act of 1934 did not convert pre-existing United States statutes into merely insular statutes.

(1) The Philippine Tariff Act of 1909 was not repealed by the Philippine Independence Act of 1934 or by the Philippine Constitution.

The Philippine Independence Act of 1934 provided that the Philippines might adopt a new Constitution, and that

ten years thereafter the Islands should have complete and final independence, but that during the interim they should remain under a tutelage comparable to that existing under the Organic Act of 1916. Laws relating to the government of the Philippines and its administration were repealed, but all other laws of the United States were continued in force subject to alteration, amendment or repeal, either by the Philippine Legislature or by the Congress of the United States. The governing provision of the Act is §15:

> "Sec. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands *or by the Congress of the United States,* * * * Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands" (L. 1934, Ch. 84, Sec. 15, 48 Stat. 464, 48 U. S. C. A. § 1245; italics supplied).

The repealing clause is thus expressed to be inapplicable where "otherwise provided", and the Section provides that "the laws now or hereafter in force in the Philippine Islands shall continue in force * * * until altered, amended, or repealed by the legislature of the Commonwealth of the Philippine Islands *or by the Congress of the United States*".

The Independence Act also provided (in sub-division 6 of § 7 thereof, 48 Stat. 462, 48 U. S. C. A. § 1237) that:

> "Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law * * *."

Therefore, unless the Act deprived the Tariff Act of 1909 of its character as a statute of the United States, the jurisdiction of this Court was fully preserved.

The respondent's counsel argued, in opposition to the petition for writ of certiorari, that § 15 of the Independence Act had actually *repealed* the Tariff Act of 1909, his theory being that all tariff laws "relate to" the administration of government, and hence that the repealer in the Independence Act of "laws relating to the present government of the Philippine Islands and its administration" was fatal to the Tariff Act of 1909. But it is unthinkable that the Congress would have chosen this occult way of depriving the new Commonwealth of a principal source of revenue.

And when § 15 is read together with the Independence Act as a whole, it is clear that the repealer of laws relating to the government and its administration was in support of the preceding provisions which set up new governmental bodies in the Islands and provided for the mechanics of their functioning.

Counsel for the respondent then argued that Article XV, Section 2, of the Constitution of the Commonwealth of the Philippine Islands has worked such repeal, by providing that:

> "All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the National Assembly * * *."

But this provision of the Constitution is open to only two possible constructions,—each inconsistent with the respondent's position. The Constitution either (1) did not purport to deal with laws of the United States, in which case they were not repealed; or else (2) it intended to include them within the phrase "laws of the Philippine Islands" (on the assumption that that phrase would cover all laws *in force* in the Islands), in which case they were expressly continued in effect.

The contrary presumption ,—that the Constitution intended to repeal all United States laws,—is certainly not a presumption which would be lightly indulged in (see *Wright* v. *Ynchausti & Co.*, 272 U. S. 640, 650-651),—and it is hardly conceivable that the framers of the Constitution, had they desired to repeal United States laws, would have been content to rely upon an affirmative provision for the continuance of Philippine laws as working by implication a repealer of United States laws.

(2) Even if the Philippine Tariff Act of 1909 were so repealed, this case involves only drawbacks alleged to have been unlawfully withheld before 1934.

The importation into the Philippines and the sale of fuel oil involved herein, the filing of the drawback entries with the respondent and the respondent's rejection thereof, all took place *before the enactment* of the Philippine Independence Act. The claims were rejected by the respondent on August 3, 1933 (R. 126). The Philippine Independence Act was not enacted until March 24, 1934 (48 Stat. 456).

Neither the character, the source, the authority nor the interpretation of the Philippine Tariff Act of 1909, in its

application to transactions in and before 1933, was affected by this subsequent independence legislation. And, assuming, as argued on behalf of the respondent, that the Philippine Tariff Act of 1909 was repealed by the Philippine Independence Act in March, 1934, and that it was then or thereafter reinstated as Philippine legislation, those effects occurring in 1934 and 1935 are without significance here except in so far as they throw into relief the fact that, in 1933, the Philippine Tariff Act of 1909 was a statute of the United States which had neither been repealed, nor reenacted, by the Philippine legislature.

The petitioner's right to the drawbacks here claimed had become vested property rights prior to the enactment of that legislation. Obviously, an independence act cannot have retroactive application. None of the provisions of the Philippine Independence Act are so expressed as to be retroactive, and upon unquestioned principles of construction they cannot be so applied to divest vested rights.

POINT IV.

Omission of the Philippine Tariff Act from the United States Code neither did, nor was intended to, deprive it of its character as a statute of the United States.

Counsel for the respondent also relied, in their brief in opposition to petition for writ of certiorari, upon the fact that the Librarian of Congress did not include the Philippine Tariff Act in the Index to the Federal Statutes compiled pursuant to the Act of March 3, 1927 (44 Stat. 1401) and published in the United States Code. But the failure to include the Philippine Tariff Act in the Index as an

existing Statute at Large is of course of no greater significance than the failure to include it in the index of statutes *repealed,* as published in the same Code. See U. S. C. 1934, Table of Statutes Repealed, page 2403.

The purpose of the Code was simply to compile laws *general* in their nature:

> "The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish *prima facie* the laws of the United States, *general* and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included" (U. S. C. Title 1, Sec. 54(a); matter in italics supplied).

Therefore, the entire contents of the Code are only *prima facie* evidence as to *general* and permanent laws and have no bearing upon the existence or character of *local laws.* This is emphasized by the following statement of Mr. Fitzgerald as Chairman of the Committee of the House of Representatives on Revision of the Laws:

> "Besides correcting errors and omissions in the codes [United States Code and District of Columbia Code] they can be further improved by the elimination of superfluous although not erroneous provisions. * * * A few provisions could well be omitted as having only local applicability and not being of general significance, although for the most part such provisions were rigidly excluded from both the United States Code and the District of Columbia Code. In fact, it is probable that more of these border-line cases have been improperly omitted than improperly included" (Congressional Record, 1931, p. 6817—matter in brackets supplied).

That the Philippine Tariff Act was omitted because it was local in nature and not because it had ceased to exist as a statute of the United States, is stated in the note to Sec. 1012, Title 48, U. S. C. A., as follows:

> "(Philippine tariff of 1909, omitted from the Code as being local in nature)."

PART TWO.

THIS DECISION OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS READS INTO SECTION 21 OF THE PHILIPPINE TARIFF LAW A LIMITATION WHICH IS INCONSISTENT WITH ITS LANGUAGE, AND CONTRARY TO ITS PURPOSE.

The Act (36 Stat. 176, § 21) provides:

> "SEC. 21. That on all fuel imported into the Philippine Islands which is afterwards used for the propulsion of vessels engaged in trade with foreign countries, or between ports of the United States and the Philippine Islands, or in the Philippine coastwise trade, a refund shall be allowed equal to the duty imposed by law upon such fuel, less one per centum thereof, which shall be paid under such rules and regulations as may be prescribed by the insular collector of customs."

The Philippine Secretary of Justice (R. 127) and the Judge of the Court of First Instance (R. 129-130) have read into this statutory provision, after the word "vessels", the phrase 'of Philippine registry".

The majority opinion in the Philippine Supreme Court has widened the limitation thus attempted to be read into

the statute, by adding thereto vessels of American registry (R. 142).

The decision thus directly contradicts the clause in the Act granting a drawback upon *"all* fuel * * * used for the propulsion of *vessels* * * *."*

(1) The Insular Supreme Court's construction of the Act in this respect is inconsistent with the plain terms of the Act.

The Act is entirely clear and unambiguous, both in its language and in its application to the facts. In the words of this Court in *St. Louis & Iron Mountain Railway* v. *Taylor,* 210 U. S. 281, 294, 295:

> "We have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described. * * * There is no escape from the meaning of these words. Explanation cannot clarify them, and ought not to be employed to confuse them or lessen their significance."

In the absence of ambiguity, there is no room for construction. *United States* v. *Hill,* 248 U. S. 420, 424; *Adams Express Company* v. *Kentucky,* 238 U. S. 190, 199.

The reading of this limitation into the statute amounts to an amendment thereof. This is not construction, but in effect new legislation. It was beyond the power of the Philippine Supreme Court. *Petri* v. *Creelman Lumber Co.,* 199 U. S. 487, 495.

Even if the omission of such a restriction upon the operation of the statute had been in some sense at variance with its purpose, or had resulted in substantial hardship

to respondent (which was not the case), the Court could not have placed this construction upon it contrary to the clear meaning of its language. *Schlitz* v. *United States,* 181 U. S. 584, 589:

> "It may be entirely true that, if this drawback be not allowed, the duties upon the bottles and corks will preclude the manufacturer from competing in foreign markets with foreign brewers, since he must necessarily export his beer in imported bottles, while his foreign competitor may use bottles manufactured in his own country. Yet this apparent hardship will not authorize us to do violence to the clear language of the statute."

An apt illustration of the principle that such a limitation cannot be read into a statute by construction is found in the provision in the comparable Act of June 19, 1886 (24 Stat. 81, Sec. 10), referred to in the majority opinion in the Insular Supreme Court (R. 147, 148). That provision limited to vessels of the United States the provision in the earlier Act of March 3, 1883 (22 Stat. 488, 511, Schedule N) for a drawback in favor of coal used for fuel on board all vessels propelled by steam. The amendment of 1886 constituted new legislation, which was held not to be entitled to a retroactive application. *Cunard S. S. Co.* v. *United States,* 25 Ct. Cl. 428; *cf. Kennedy* v. *United States,* 23 Ct. Cl. 363. It should be observed also that this particular provision for drawback was not reenacted in the Tariff Law of 1890 (26 Stat. 600), but was repealed by implication (*United States* v. *Allen,* 163 U. S. 499). The amending limitation upon the right to a drawback (24 Stat. 81) was thus left with nothing to apply to. There is no

conceivable basis for applying it to the Philippine Tariff Law of 1909, which was enacted some nineteen years later.*

We turn now to the meaning of the word "vessels".

As pointed out in the minority opinion of the Philippines Supreme Court (R. 150), that Court had itself held in regard to this very section (§ 21) of the Tariff Act of 1909 in *Yangso* v. *Aldanese*, 51 Phil. 348, 351:

> "It must be understood that Congress has given the words used in its Act of 1909 the same meaning they have in its legislation as construed by the courts of the United States."

Now the word "vessels" had not merely been construed by "the courts of the United States" in the *Kennedy* case, *supra*, 23 Court of Claims Reports 363, but the Congress has itself given an express definition to the term as used in the customs laws (42 Stat. 948, 19 U. S. C. A. § 231)[1]:

> "(a) *Vessel.*—The word 'vessel' includes every description of water craft or other contrivance used, or capable of being used as a means of transportation in water, or in water and in air."

There is here no limitation to vessels of a particular registry.

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*In the Tariff Act of the United States of 1909 it was provided that coal and mineral oils should be taxed at a stated rate (36 Stat. 140), except that there appeared on the free list:

> "535. Coal, anthracite, and coal stores of American vessels, but none shall be unloaded." (36 Stat. 76.)

It should be observed that the provisions of the Act both with respect to the free list and the dutiable list applied to the United States and its possessions "except the Philippine Islands and the Islands of Guam and Tutuila." (36 Stat. 11, 71.)

[1]Amended in 1935 in a manner not here relevant (19 U. S. C. A. § 1401).

Had the Congress intended the benefit of the drawback to be confined to ships of Philippine or of United States registry, it could have made the discrimination in language similar to that employed by it in the same statute in providing that the following, among other articles, should be free of duty (§ 1, Art. 348, 36 Stat. 173):

> "348. Repairs to *vessels documented in the Philippine Islands or regularly plying in Philippine waters,* made in foreign countries, upon proof, satisfactory to the collector of customs, that adequate facilities for such repairs are not afforded in the Philippine Islands."

The intended contrast between vessels of those particular classes, and vessels generally, is brought into relief by the fact that the very next Article relates generally to

> "349. Articles and materials actually used in the construction, equipment or repair within the Philippine Islands of *vessels,* their machinery, tackle, or apparel, subject to such restrictions, conditions, and regulations as the insular collector of customs may provide."

And again, in levying duties on boats or other water craft, it is provided (36 Stat. 159):

> "200. Boats, launches, lighters, and other water craft, set up or knocked down, imported into the Philippine Islands, and cost of repairs made in foreign countries to vessels, or to parts thereof, *documented for the Philippine coastwise trade or plying exclusively in Philippine waters* and for which repairs adequate facilities are afforded in the Philippine Islands, fifty per centum ad valorem."

The sections of the statute may, of course, be appropriately construed together, and the omission in § 21, as in Article 349, of a limitation to vessels of Philippine, or American, registry must be recognized as intended, in view of the specific provisions of Articles 200 and 348.

And an intention generally to apply the tariff to articles to be consumed in, or to remain in, the Philippines, as distinct from those to be re-exported, is indicated in the preamble to the Act, wherein it was resolved by the Congress that the rates of import duty be levied, collected and paid upon all articles entering the jurisdiction of the Islands

> "either with intent to unlade therein, or which, after such entering, are consumed therein, or become incorporated into the general mass of property within said islands" (36 Stat. 130).

(2) The Philippine Supreme Court's construction of the Act in the respect complained of is contrary to the purpose for which it was enacted.

The Philippine Supreme Court's decision is based squarely on the assumption (for which it has cited no reason or authority whatever) that the purpose of this drawback provision was "to build up and protect a national merchant marine engaged in said trade" (R. 138, 139). This was a revision of the view, expressed by the Court of First Instance of Manila (R. 130), and the Secretary of Justice (R. 127), that the drawback applied only to fuel sold to vessels of Philippine registry.

The views thus expressed overlooked the consideration that, as an historical fact, the purpose of allowing drawbacks upon imported goods, later exported, is the protection of *merchants* engaged in foreign trade, and of the con-

trasting fact that aid to the merchant marine (when granted) has not been by a provision of drawbacks or other customs legislation, but has been in the form of government mail contracts, construction bounties, loans upon favorable terms and similar benefits in the nature of subsidies,[1] and the like.

The view of the Philippine court is thus directly opposed to the conception of the protection of home industries which so largely underlay American tariff policy, particularly at this period (1909), and, specifically, to the theory and purpose of the Paine-Aldrich tariff legislation, of which the Philippine tariff law of 1909 was a part, or an adjunct.

The history of this proposed Philippine tariff legislation prior to its enactment is set forth in H. R. Document No. 14 of the Sixty-first Congress, First Session. The bill was presented to the Congress supported by a short message by President Taft, dated October 14, 1909, based upon a memorandum, signed by Brigadier General C. R. Edwards, Chief of the Bureau of Insular Affairs, and directed to the Secretary of War. President Taft's message recommended that the bill be passed "as one incidental to and required by the passage of the Paine bill." He further stated of the bill:

> "It is drawn with a view to preserving to the islands as much customs revenue as possible, *and to protect in a reasonable measure those industries which now exist in the islands.*" (italics ours.)

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[1]Message of President Roosevelt, dated March 4, 1935, to the 74th Congress, 1st Session, and annexed Report of the Postmaster General, in H. R. Document No. 118.

Report No. 713 to the Senate, 74th Congress, 1st Session, and annexed Senate Document No. 60, concerning Merchant Marine Policy and Shipping and Shipbuilding Subsidies.

The letter of Brigadier General Edwards to the Secretary of War, which is a part of Document No. 14 and which is referred to above, states that the bill is intended as a revision and simplification of the existing tariff law of the Philippine Islands, making it conform as nearly as may be to that of the United States. He further says:

> "The purpose of the bill is also to meet the conditions which will arise under the free-trade provisions of the Paine bill, to save as much customs revenue as possible to the islands under those conditions, and at the same time to protect in reasonable measure the *paying industries now operating in the Islands.*
>
> "It will be understood that the results of the free admission of American goods into the Philippine Islands must revolutionize business in the Philippines, and unless the adoption of that policy is accompanied by a revision of the present Philippine tariff it will be disastrous to some important industries in the islands and also result in such serious loss to the customs revenue as to embarrass the Philippine government." (italics ours.)

A reading of the proposed bill will show that it was passed substantially as presented. It contained two principal drawback provisions. The first (Section 21, proposed as Section 23) is that here under discussion. The second authorized a drawback of the tariff paid upon imported articles which were later exported, either in the same form or as constituent parts of manufactured articles (Section 22; proposed as Section 24; Congressional Document No. 14, pp. 56, 57).

Assuming, as we are both entitled and required to do, that the views of the sponsors of the legislation were adopted by the Congress, it is apparent beyond any reason-

able doubt that the purpose of the Act, in so far as it had a purpose over and above that of raising revenue, was not to aid transportation or commerce, but was to benefit and protect the industries then existing on the Islands.[2]

The Court may also take judicial cognizance of the fact that the Philippine Islands in 1909 had no merchant marine of any sort. Their first marine registry law was not enacted until many years later; and even in 1928 vessels of Philippine registry were engaged only in the coastwise trade, did not engage in foreign trade at all, and carried only a nominal portion of the goods shipped to and among the Islands.[3]

The protective tariff policy expressed in the Tariff Act of 1909 has never been subservient to the requirements of the merchant marine (either Philippine or American), nor related to it. The decisions of the Philippine courts, here appealed from, to the contrary, are totally without foundation.

Respectfully submitted,

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GEORGE M. BILLINGS,
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On the brief.

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[2]See *Hampton* v. *United States,* 276 U. S. 394, and specifically regarding drawbacks as instruments of the protection policy, *Campbell* v. *United States,* 107 U. S. 407, 413, *Tide Water Oil Co.* v. *United States,* 171 U. S. 210, 216, and *Schlitz* v. *United States,* 181 U. S. 584, 586.

[3]See hearings on October 18-24, 1929, before the Subcommittee on Commerce of the United States Senate Concerning the Extension of the Coastwise Shipping Laws of the United States to the Philippine Islands; Seventy-first Congress, First Session; held pursuant to S. Res. 130.